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PATENT
Atty Docket No. RDUR0001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

RUBEN DURAN

Title: ESCROW ACCOMMODATION
SYSTEM

Serial No.: 09/916,927

Date Filed: July 27, 2001

Confirmation No.: 8764

Group Art Unit: 3628

**Petitions Examiner: Carl
Friedman**

DECLARATION OF RUBEN DURAN IN SUPPORT OF RENEWED PETITION
UNDER 37 C.F.R. 1.137(b)

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Ruben Duran, do hereby declare as follows:

1. I am the inventor of the design described and claimed in United States Patent Application Serial No. 09/916,927, entitled "Escrow Accomodation System" ("the '927 patent application.")

2. The '927 patent application was prepared and filed on my behalf by the law firm of Benman and Collins. At all times discussed subsequently herein, and in general at all times after January 2005, I was not represented by Benman and Collins.

3. I am the president of a number of companies doing business in California. Since 2005, the principal entity I have controlled is Dynamic Brokers, Inc. and is a real estate related business. I also control a number of smaller investment companies. In 2005, Dynamic Brokers Inc. had its principal office at 2901 W. Beverly Blvd., Montebello, California 90640. Our Montebello office occupied two floors and we had over 100 persons, consisting of independent brokers, agents, and other personnel, working for Dynamic Brokers Inc. at this location. This Montebello office housed the vast majority of all business documents related to all of my businesses.

4. On or about June 15, 2005, a fire broke out at our Montebello office. A true and correct copy of a document indicating an Incurred Loss of over \$578,000 resulting from the fire, received by me from my insurance agent, Anthony Sanchez at Farmers Insurance Group, is included here as Exhibit A.

5. People from the Fire Department told me that as a result of the fire, over 12,000 gallons of water poured into the upper floor of our offices. Water poured down from the upper floor into the lower floor. Attached hereto as Exhibit B is a bill for extraction of over 12,000 gallons of water that poured into our building as a result of the fire. The two floors housing our offices were considered by the insurance company to be a "total loss," and to the best of my recollection I believe that was the term conveyed to me by the insurance company or the Fire Department at the time. I believe that our offices were a total loss – we lost everything. All of our computer and paper records were lost, including virtually all records related to Dynamic Brokers Inc. and important records housed at the Montebello office related to my other businesses.

6. The fire devastated my businesses. Recovering from the fire and getting the businesses running again took a huge amount of time and effort for me and the people working with me. The records that were destroyed by the fire and water were critical to

our business operations going forward, and reproducing the information contained in those records was necessary but very time consuming. As a result of having to stop business and replicate all of our records and reestablish all of our business contacts, Dynamic Brokers Inc. lost over 80 per cent of our personnel, decreasing from a head count of about 130 down to a head count of about 25 or 30. All records having to do with all of our accounts were lost, and I set about putting the pieces of the company back together. Dynamic Brokers Inc. took in no revenues for months, and the company did not open again for business until January 2007. In short, the entire episode required an excessive amount of attention from me, and consumed much of my time in the 2005-2006 time frame.

7. In the middle of our fire recovery efforts, in late March or early April 2006, I received the Office Action for the '927 application dated March 27, 2006. I am not a patent attorney and this is the first patent application filed by me, so this is my first experience with the patent application process. I reviewed the Office Action and did not know how to respond to it.

8. I contacted my attorney, Mr. Breton Boccierri. Mr. Boccierri said that he was not able to respond to the Office Action. He recommended Mr. Steven Smyrski. I contacted Mr. Smyrski in April 2006 and met with him on April 26, 2006 to discuss the situation. Mr. Smyrski told me he did not have the capacity to respond to the Office Action at that time, and indicated to me that his firm had too many commitments to take on the response at that time. Mr. Smyrski cautioned me about the need to respond to the Office Action and the possibility of abandonment.

9. On information and belief, in May 2006, Mr. Smyrski referred me to a woman who was a patent attorney and who offered to meet with me. As of the present time, I cannot recall the woman's name. I have spoken to Mr. Smyrski and he cannot recall her name as she was referred to him by someone else, but she had previously been an IBM employee and had worked on patent prosecution matters for IBM. We scheduled a meeting, I believe in early June 2006, and though I went to the meeting place, she

unfortunately failed to attend the meeting. I subsequently called her and she did not return my call.

10. I made further efforts to try to find someone who could respond to the Office Action, including contacting Mr. Boccierri and Mr. Smyrski requesting further referrals, but I was unable to find a patent lawyer who could assist me. As noted, much of my focus at this time was on reestablishing my businesses, getting operations together, recreating our records, dealing with personnel issues, and so forth.

11. It was never my intention to abandon this patent application or fail to reply to the Office Action. I simply could not find anyone to prepare and file a response in the time allowed. I wanted to respond but did not know how to respond and could not find someone who could prepare and file a response. The '927 patent application unfortunately went abandoned for failure to respond, but it was never my intention to fail to respond. I simply could not find anyone who had the time and ability to understand the Office Action and prepare a response. I had numerous other matters to attend to at the time, and I put forward my best efforts to attend to the Office Action, but I failed to engage someone who could help me in the time provided. Unfortunately, and without my intent, the patent application went abandoned.

12. At the time the '927 patent application went abandoned, I believed there was nothing more I could do, and that it was lost. Recently, in 2009, business developments have caused me to contact Mr. Boccierri. I called Mr. Boccierri in approximately June 2009, who indicated that I might be able to revive the '927 application. Mr. Boccierri again referred me to Mr. Smyrski and I am informed that he spoke with Mr. Smyrski about the present situation.

13. When the '927 patent application went abandoned, it was my understanding that nothing more could be done by me. I believed the patent application was gone, or lost, forever. I was wrong in my assumption. I now understand that procedures exist for reviving the patent application, but I did not understand this until approximately June 2009. Had I known earlier that I could have asked to revive the

abandoned patent application, I would have done so, and would have requested reviving the abandoned patent application in 2007 or 2008, if not earlier. Since I only learned of reviving the application this year, I asked my attorneys to revive the application. However, again, it was never my intention to abandon this application, and it is only through a series of unfortunate events that I am requesting at this time, in 2009, to have the patent application reinstated.

14. I never intended to abandon this application. As a result of the fire and total loss of my business in 2005, my unsuccessful attempts to find a person who could respond to the Office Action, and my mistaken belief that abandonment of a patent application was permanent and unfixable until informed otherwise in June 2009, I am now seeking to have the patent application reinstated. I did not intend to abandon the patent application, I wanted to respond but could not myself and could not find someone to respond, and I now regret not acting sooner after the patent application went abandoned. I hereby state that the entire delay in filing the required reply from the date due for the reply until the filing of the petition accompanied by the reply was unintentional.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: November 6, 2009

A handwritten signature in black ink, appearing to be 'RD', is written over a horizontal line.

Ruben Duran

Exhibit A

**FARMERS**

Farmers Insurance Group of Companies
 Business Name: DYNAMIC BROKERS INC
 Policy #: 093906631

Insured Name: DYNAMIC BROKERS INC
 Address: 2901 W BEVERLY BLVD
 MONTEBELLO, CA 90840

Today's Date: Oct 26, 2009
 Agent Number: 092922347
 Agent: SANCHEZ ANTHONY
 Agent Phone #: 562-924-6675

Claims Policy Term Summary

Term	Annual Premium	Incurred Losses
Feb 28, 2008 to Jun 28, 2008	\$1,403.00	\$0.00
Term	Annual Premium	Incurred Losses
Jun 30, 2007 to Jan 6, 2008	\$2,219.00	\$0.00
Term	Annual Premium	Incurred Losses
Jun 30, 2006 to Jun 30, 2007	\$6,126.00	\$0.00
Term	Annual Premium	Incurred Losses
Jun 30, 2005 to Jun 30, 2006	\$8,497.00	\$0.00
Term	Annual Premium	Incurred Losses
Dec 8, 2004 to Jun 30, 2005	\$3,187.00	\$578,427.53

Loss Details

Claim Number: PC-035213 Claim Type: Property Loss Date: Jun 15, 2005
 Status: CLOSED
 Claim Total: \$578,427.53

Loss Details

Claim Number: C7-051279 Claim Type: Liability Loss Date: Apr 1, 2005
 Status: CLOSED
 Claim Total: \$0.00

Term	Annual Premium	Incurred Losses
Sep 16, 2004 to Nov 16, 2004	\$959.00	\$0.00
Term	Annual Premium	Incurred Losses
Jun 30, 2004 to Aug 31, 2004	\$973.00	\$0.00
Term	Annual Premium	Incurred Losses
Jun 30, 2003 to Jun 30, 2004	\$5,347.00	\$0.00
Term	Annual Premium	Incurred Losses
Jul 31, 2002 to Jun 30, 2003	\$3,824.00	\$0.00

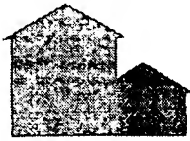
Print Loss Runs

Page 2 of 2

Term Dec 26, 2001 to Jun 26, 2002	Annual Premium \$1,762.00	Incurred Losses \$0.00
Term Jun 30, 2001 to Dec 10, 2001	Annual Premium \$1,578.00	Incurred Losses \$0.00
Term Jun 30, 2000 to Jun 30, 2001	Annual Premium \$3,343.00	Incurred Losses \$0.00

This loss information may include reserves and is based upon the current estimate of the cumulative loss or claims reserves, including adjustment expenses and defense chargeable to this policy for the current policy period. This reserve estimate is subject to future revisions as facts and circumstances change, and is not a statement of any estimate of settlement value or settlement authority under this policy for a claim or loss.

Exhibit B



License: 779289

Brosteem Builders Inc. DBA:

ServiceMaster By T. A. Russell
541 S. Glendora Ave., Suite B
Glendora CA 91741
866/808-9700

Contract Invoice

Invoice#: 1653

Date: 08/12/2005

Billed To: Ramon Duran
2901 W. Beverly Blvd
Glendora CA 90640

Project: Duran, Ramon
2901 W. Beverly Blvd
Montebello CA 90640

Due Date: 08/22/2005

Terms: 10DY

Order# 05_3251-E

Description	Amount
Claim #PC035211~Claim Rep~Bill Farquhar~ Water Extraction Services We began on 06/15/05, dried to industry standards on 07/07/05.	68,707.59

Farmers Insurance has notified us and we are aware that they are sending you the payment on the claim. A self address envelope is enclosed for payment.

Contact Renee McFadden with questions.

Thank you we appreciate your business.

Notes:

*A service charge of 1.50 % per annum will be charged on all amounts
overdue on regular statement dates.*

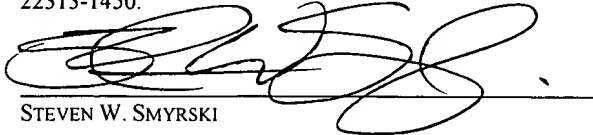
Thank you for your prompt payment!

Non-Taxable Amount:	68,707.59
Taxable Amount:	0.00
Sales Tax:	0.00
Amount Due	68,707.59



PATENT
Atty Docket No. RDUR0001

I CERTIFY THAT ON NOVEMBER 6, 2009, WHICH IS THE DATE I AM SIGNING THIS CERTIFICATE, THIS CORRESPONDENCE AND IDENTIFIED ENCLOSURES ARE BEING DEPOSITED IN THE UNITED STATES POSTAL SERVICE, POSTAGE PAID FIRST CLASS, IN AN ENVELOPE ADDRESSED TO: MAIL STOP PETITIONS, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.


STEVEN W. SMYRSKI

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

RUBEN DURAN

Title: ESCROW ACCOMMODATION
SYSTEM

Serial No.: 09/916,927

Date Filed: July 27, 2001

Confirmation No.: 8764

Group Art Unit: 3628

**Petitions Examiner: Carl
Friedman**

RENEWED PETITION UNDER 37 C.F.R. 1.137(b)

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the Decision on Petition mailed September 9, 2009, Applicant renews the Petition For Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b).

Inventor Ruben Duran renews his Petition For Revival of an Application for Patent Abandoned Unintentionally and again unequivocally states that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. 1.137(b) was unintentional.

DISCUSSION

The Decision on Petition, mailed September 9, 2009, characterizes delay in filing the required reply as three separate periods of delay, and states that “the delay has not been shown to the satisfaction of the Director to be unintentional for” “(1) the delay in reply that originally resulted in the abandonment” and “(2) the delay in filing an initial petition pursuant to 37 C.F.R. 1.137(b) to revive the application.”¹

The Decision on Petition thus seeks evidence of delay during these two periods. As evidenced by the attached Declaration of Ruben Duran, the delay for period (1) was unintentional in that Mr. Duran experienced a catastrophic fire and extensive water damage at his place of business prior to the mailing of the Office Action. At the time the Office Action was received, Mr. Duran was working diligently on reviving his business. Even during this challenging time for Mr. Duran and his business, Mr. Duran made various efforts to locate someone qualified to respond to the Office Action, but could not locate a qualified individual who could assist him. Despite good intentions and honest efforts, Mr. Duran simply ran out of time and the case went abandoned. Regarding

¹ Applicant notes a mischaracterization in the Decision on Petition, namely the assertion on page 1 that “The instant petition lacks item (3) [a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional].” This is incorrect. As evidenced by the original Petition, a copy of which is attached hereto as Exhibit A, page 2 of 2 thereof includes a STATEMENT, labeled “4.” that affirmatively says:

“4. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. ...”

This affirmative statement is signed in Exhibit A by Ruben Duran, inventor of the present application. Thus the statement that item 3, the statement that delay was unintentional, was lacking or somehow missing or not presented is incorrect. Mr. Duran made such a statement in the original Petition. Applicant submits that the appropriate characterization of the Decision is that in addition to this statement, the Director is now seeking additional evidence of the delay as permitted by, for example, MPEP 711.03(c).

period (2), Mr. Duran was under the mistaken impression that abandonment of the application meant that the application was irretrievably lost, or permanently abandoned. Mr. Duran did not understand that there were mechanisms in place at the United States Patent Office to revive an unintentionally abandoned patent application, and as a result of this misunderstanding did not act for many months after the case went abandoned.

Mr. Duran did not intend to delay in replying to the original Office Action, but could not do it himself and could not locate someone to file the response in addition to the other matters he was attending to at the time as a result of the fire, and thus the delay for period (1) as characterized by the Decision on Petition was unintentional. Further, Mr. Duran mistakenly believed that abandonment of a patent application was permanent and that the application was forever lost. He did not understand that an abandoned patent application could be revived, and states that had he known so, he would have attempted to have the application revived sooner. Thus the delay for period (2) as characterized by the Decision on Petition was also unintentional.

Mr. Duran states that he is the president of a number of companies doing business in California. (Declaration of Ruben Duran, paragraph 3). Since 2005, the principal entity controlled by Mr. Duran is Dynamic Brokers, Inc. a real estate related business. (*Id.*) Mr. Duran also controls a number of smaller investment companies. (*Id.*) In 2005, Dynamic Brokers Inc. had its principal office at 2901 W. Beverly Blvd., Montebello, California 90640. (*Id.*) The Montebello office occupied two floors and Dynamic Brokers, Inc. had over 100 persons, consisting of independent brokers, agents, and other personnel, working for the company at this location. (*Id.*) This Montebello office housed the vast majority of all business documents related to all of Mr. Duran's businesses.

On or about June 15, 2005, a fire broke out at the Montebello office of Dynamic Brokers, Inc. (Declaration of Ruben Duran, paragraph 4). As a result of the fire, over 12,000 gallons of water poured into the upper floor of the offices of Dynamic Brokers, Inc. (*Id.*) Water poured down from the upper floor into the lower floor. (*Id.*) The two floors housing the Dynamic Brokers, Inc. offices were considered by Mr. Duran's

insurance company to be a "total loss." (Declaration of Ruben Duran, paragraph 5) Virtually all records related to the Dynamic Brokers Inc. business were lost, as well as important documents housed at the Montebello office related to Mr. Duran's other businesses. (*Id.*)

The fire devastated Mr. Duran's businesses. (Declaration of Ruben Duran, paragraph 6). Recovering from the fire and getting the business running again took a huge amount of time and effort for Mr. Duran and the people working with him. (*Id.*) The records that were destroyed by the fire and water were critical to business operations going forward, and reproducing the information contained in those records was necessary but very time consuming. (*Id.*) As a result of having to stop business and replicate all of its records and reestablish all of its business contacts, Dynamic Brokers Inc. lost over 80 per cent of its personnel, decreasing from a head count of about 130 down to a head count of about 25 or 30. (*Id.*) All records having to do with all of its accounts were lost, and Mr. Duran set about putting the pieces of the company back together. (*Id.*) Dynamic Brokers Inc. took in no revenues for months, and the company did not open again for business until January 2007. (*Id.*) In short, the entire episode required an excessive amount of attention from Mr. Duran, and consumed much of Mr. Duran's time in the 2005-2006 time frame. (*Id.*)

Mr. Duran received the Office Action for the '927 application dated March 27, 2006. (Declaration of Ruben Duran, paragraph 7). Mr. Duran is not a patent attorney and this is the first patent application filed by Mr. Duran. (*Id.*) This is Mr. Duran's first experience with the patent application process. (*Id.*) Mr. Duran reviewed the Office Action and did not know how to respond to it. (*Id.*)

Upon receiving the Office Action, Mr. Duran contacted his attorney, Mr. Breton Boccierri. (Declaration of Ruben Duran, paragraph 8). Mr. Boccierri said that he was not able to respond to the Office Action. (*Id.*) He recommended Mr. Steven Smyrski. (*Id.*) Mr. Duran contacted Mr. Smyrski in April 2006 and met with him on April 26, 2006 to discuss the situation. (*Id.*; Declaration of Steven W. Smyrski, paragraph 2) Mr.

Smyrski told Mr. Duran he did not have the capacity to respond to the Office Action at that time, and indicated to Mr. Duran that his firm had too many commitments to take on the response at that time. (Declaration of Ruben Duran, paragraph 8; Declaration of Steven W. Smyrski, paragraph 3.) Mr. Smyrski cautioned Mr. Duran about the need to respond to the Office Action and the possibility of abandonment. (*Id.*)

In May 2006, Mr. Smyrski referred Mr. Duran to a woman who was also a patent attorney. (Declaration of Ruben Duran, paragraph 9; Declaration of Steven W. Smyrski, paragraph 5). Neither Mr. Duran nor Mr. Smyrski can recall the woman patent attorney's name. (Declaration of Ruben Duran, paragraph 9; Declaration of Steven W. Smyrski, paragraph 6). The woman patent attorney was referred to Mr. Smyrski by someone else, but she had previously been an IBM employee and had worked on patent prosecution matters for IBM. (Declaration of Ruben Duran, paragraph 9; Declaration of Steven W. Smyrski, paragraphs 5 and 6). Mr. Duran scheduled a meeting with the woman patent attorney, believed to be in early June 2006. (Declaration of Ruben Duran, paragraph 9). Mr. Duran went to the meeting place, but the woman unfortunately failed to attend the meeting. (*Id.*) Mr. Duran subsequently called her and she did not return his call. (*Id.*)

Mr. Duran made further efforts to try to find someone who could respond to the Office Action, including contacting Mr. Boccierrri and Mr. Smyrski requesting further referrals, but Mr. Duran was unable to find a patent lawyer who could assist him. (Declaration of Ruben Duran, paragraph 10; Declaration of Steven W. Smyrski, paragraph 7) As noted, much of Mr. Duran's focus at this time was on reestablishing his businesses, getting operations together, recreating records, dealing with personnel issues, and so forth. (Declaration of Ruben Duran, paragraph 10)

As stated by Mr. Duran, it was never his intention to abandon this patent application or fail to reply to the Office Action. (Declaration of Ruben Duran, paragraph 11) Mr. Duran simply could not find anyone to prepare and file a response in the time allowed. (*Id.*) Mr. Duran wanted to respond but did not know how to respond and could not find someone who could prepare and file a response. (*Id.*) The '927 patent

application unfortunately went abandoned for failure to respond, but it was never Mr. Duran's intention to fail to respond. (*Id.*) Mr. Duran simply could not find anyone who had the time and ability to understand the Office Action and prepare a response. (*Id.*) Mr. Duran had numerous other matters to attend to at the time, and Mr. Duran put forward his best efforts to attend to the Office Action. (*Id.*) However, Mr. Duran failed to engage someone who could help him in the time provided. (*Id.*) Unfortunately, and without intent, the patent application went abandoned. (*Id.*)

At the time the '927 patent application went abandoned, Mr. Duran believed there was nothing more he could do, and Mr. Duran believed that the patent application was irretrievably lost. (Declaration of Ruben Duran, paragraph 12) In 2009, business developments have caused Mr. Duran to contact Mr. Boccierri. (*Id.*) Mr. Duran called Mr. Boccierri in approximately June 2009, who indicated that he might be able to revive the '927 application. (*Id.*) Mr. Boccierri again referred Mr. Duran to Mr. Smyrski and Mr. Boccierri spoke with Mr. Smyrski about the present situation. (*Id.*; Declaration of Steven W. Smyrski, paragraph 8)

When the '927 patent application went abandoned, it was Mr. Duran's understanding that nothing more could be done by him. (Declaration of Ruben Duran, paragraph 13; Declaration of Steven W. Smyrski, paragraph 8) Mr. Duran believed the patent application was gone, or lost, forever. (*Id.*) Mr. Duran knows now that he was wrong in his assumption. (*Id.*) Mr. Duran now understands that procedures exist for reviving the patent application, but he did not understand this until approximately June 2009. (*Id.*)

Mr. Duran affirmatively states that had he known earlier that he could have sought revival of the abandoned patent application, he would have done so, and would have requested reviving the abandoned patent application in 2007 or 2008, if not earlier. (Declaration of Ruben Duran, paragraph 13) Since Mr. Duran only learned of reviving the application this year, Mr. Duran asked his attorneys to revive the application. (*Id.*) Again, it was never Mr. Duran's intention to abandon this application, and it is only

through a series of unfortunate events that Mr. Duran is requesting at this time, in 2009, to have the patent application reinstated. (*Id.*)

Mr. Duran affirmatively further states that he never intended to abandon this application. (Declaration of Ruben Duran, paragraph 14) As a result of the fire and total loss of his business in 2005, his unsuccessful attempts to find a person who could respond to the Office Action, and his mistaken belief that abandonment of a patent application was permanent and unfixable until informed otherwise in June 2009, Mr. Duran is seeking to have the patent application reinstated. (*Id.*) Mr. Duran did not intend to abandon the patent application, and wanted to respond but could not himself and could not find someone to respond. (*Id.*) Now knowing the reinstatement policies of the PTO, Mr. Duran regrets not acting sooner after the patent application went abandoned. (*Id.*)

Mr. Duran states that the entire delay in filing the required reply from the date due for the reply until the filing of the petition accompanied by the reply was unintentional. . (Declaration of Ruben Duran, paragraph 14)

Ruben Duran was unrepresented by patent counsel during the two time periods being discussed, and as such, was an individual pro se applicant who had a very limited knowledge of patent procedures. Applicant notes that it is the policy of the Patent Office generally to encourage and assist individual inventors, such as Mr. Duran, and cites MPEP §707.07(j)(I), which calls for the examiner to assist the pro se applicant in producing acceptable claims. Applicant here requests, that as a pro se applicant who did make efforts to obtain counsel, that the Petitions Branch not hold Mr. Duran's limited knowledge of Patent Office abandonment revival rules and procedures against him. Applicant respectfully requests reinstatement of the present application and transfer of the Reply filed with the Petition to the Examinations branch at an early date.

Summary

Ruben Duran did not intentionally delay in replying to the March 27, 2006 Office Action, as he contacted persons who he hoped could assist but could or did not, and much

of his focus was getting his devastated business operational again. Further, Mr. Duran misunderstood abandonment, believing “abandonment” actually meant irretrievable loss of rights, when in fact the application could have been revived earlier by petition. None of the foregoing, during the two periods identified in the Decision on Petition, demonstrates an intent at any time to abandon the ‘927 application. The entire delay (including the two periods identified in the Decision on Petition) in filing the required reply from the date due for the reply until the filing of the petition accompanied by the reply was unintentional.

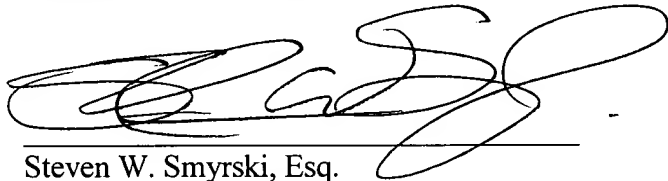
CONCLUSION

Applicant therefore respectfully submits that he has provided sufficient evidence demonstrating that the entire delay in filing the required reply from the date due for the reply until the filing of the petition accompanied by the reply was unintentional. Applicant therefore respectfully requests that the application be revived pursuant to the provisions of 37 C.F.R. §1.137(b).

Should the Office and specifically the Petitions Branch be of the opinion that insufficient evidence exists of the unintentional delay, Applicant asks that the undersigned be contacted such that the matter can be resolved, namely a discussion as to any alleged deficiencies in the current evidence and an explanation of additional evidence required.

Applicant had previously included the requisite Petition fee, and believes no additional fees are required. Should additional fees be required for consideration of the present Petition, the Commissioner is authorized to charge any additional amounts due in connection with this matter to our Deposit Account 502026.

Respectfully submitted,



Steven W. Smyrski, Esq.
Registration No. 38,312

Date: November 6, 2009

SMYRSKI LAW GROUP, A PROFESSIONAL CORPORATION
3310 Airport Avenue, SW
Santa Monica, California 90405-6118
Phone: 310.397.9118
Fax: 310.397.9158

Exhibit A

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

First named inventor: Ruben G. DuranApplication No.: 09/916,927Filed: July 27, 2001Art Unit: 3628Examiner: Harish T. Dass

Title:

ESCROW ACCOMMODATION SYSTEM

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

File: **APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional

1. Petition Fee

- ☒ Small entity-fee \$ 810. (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.
- ☐ Other than small entity-fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in the form of PTO-2038 (identify type of reply):

- ☐ has been filed previously on _____
- ☒ is enclosed herewith.

- B. The issue fee and publication fee (if applicable) of \$ _____

- ☐ has been paid previously on _____
- ☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature

Ruben G. Duran

Type or Printed name

5201 Glennon Drive

Address

Whitter, CA 9060 1

Address

July 14, 2009

Date

Registration Number, If applicable

323.303.9121

Telephone Number

Enclosures:

- ☒ Fee Payment
- ☒ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unintentional delay
- ☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

- ☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

July 14, 2009

Date

Signature

Steven W. Smyrski

Typed or printed name of person signing certificate



PATENT
Atty Docket No. RDUR0001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

RUBEN DURAN

Title: ESCROW ACCOMMODATION
SYSTEM

Serial No.: 09/916,927

Date Filed: July 27, 2001

Confirmation No.: 8764

Group Art Unit: 3628

**Petitions Examiner: Carl
Friedman**

**DECLARATION OF STEVEN W. SMYRSKI IN SUPPORT OF RENEWED
PETITION UNDER 37 C.F.R. 1.137(b)**

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Steven W. Smyrski, do hereby declare as follows:

1. I am a registered patent attorney, Reg. No. 38,312.
2. In approximately April 2006, Mr. Breton Boccierri contacted me regarding Mr. Ruben Duran, indicating Mr. Duran had a patent issue. Mr. Boccierri said

that Mr. Duran would be calling me. Mr. Duran did call me and we arranged a meeting and he and I met on April 26, 2006.

3. At our April 26, 2006 meeting, I told Mr. Duran that my firm and I did not have the capacity to respond to the Office Action at that time. Our firm had numerous commitments at the time and we were not taking on new work. I reviewed certain patent materials Mr. Duran brought to the meeting and spoke to Mr. Duran about the need to respond to an Office Action mailed March 27, 2006 and the possibility of abandonment. I counseled Mr. Duran to again speak with Mr. Boccierri and attempt to find new representation as soon as possible. I said I would try to find someone who could assist him.

4. I emailed Mr. Boccierri telling him that I could not represent Mr. Duran. A true and correct copy of that email, dated May 5, 2006, is included as Exhibit A hereto. A portion of this email that is not pertinent to these issues has been redacted.

5. I contacted various friends who I thought might be able to assist Mr. Duran, but no one was available to assist Mr. Duran. To the best of my recollection, in May 2006, one friend later called me with the name of a woman who could assist Mr. Duran. I called the woman and spoke to her; she said she could assist, and I subsequently called Mr. Duran and gave him her name and telephone number.

6. I have checked my records, and as many of these communications were by phone, I at this time, three years later, do not have the name or phone number of the woman to whom I referred Mr. Duran. I do not at this time recall the friend who gave me her name.

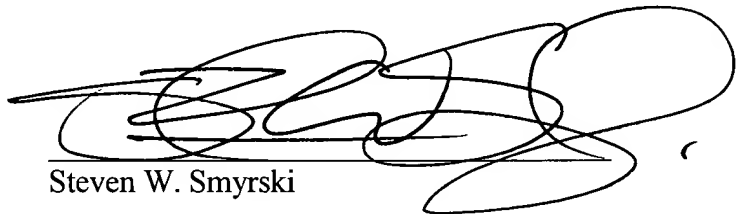
7. To the best of my recollection, in May, 2006, Mr. Duran called me back and told me that he was unable to meet with the woman to whom I referred him, and asked if I had any further referrals. I again referred Mr. Duran back to Mr. Boccierri but said I would continue to see if I could find someone who wanted to take on his matter,

and my recollection is that we again discussed the abandonment issue. Unfortunately, in the relevant time period, I could not find anyone who could assist Mr. Duran.

8. Mr. Boccierri again contacted me about Mr. Duran in June 2009 and we generally discussed revival of the '927 application. Mr. Duran came to my office and we discussed reviving the '927 application, and Mr. Duran stated he had not realized that revival of an abandoned application was possible.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: November 6, 2009



Steven W. Smyrski

Exhibit A

From: Smyrski, Steven W. [mailto:steve@smyrski.com]
Sent: Wednesday, May 03, 2006 10:47 AM
To: 'Bocchieri, Breton (Perkins Coie)'
Subject: RE: New Client : Ruben Duran

Bret,

Hope all is well with you these days – and many thanks for the referral.

Ruben and I finally had an opportunity to meet last week. I reviewed certain materials related to his patent filing.

For various reasons, including the sheer volume of work we have at the current time, we will be unable to represent Ruben in the patent prosecution matter. I will attempt to refer him to someone who may be able to represent him in responding to the outstanding Office Action.

Again, thanks for thinking of me.

Steve Smyrski

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"The best way to predict the future is to invent it"
- Alan Kay

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